related proceeding is terminated. The Commission may assign the motion to an administrative law judge for issuance of a recommended determination. The deadlines and procedures that will be followed in processing the recommended determination will be set forth in the Commission order assigning the motion to an administrative law judge.

(d) If an administrative law judge's order concerning sanctions is issued before the initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of the investigation, it may be appealed under §210.24(b)(1) with leave from the administrative law judge, if the requirements of that section are satisfied. If the order is issued concurrently with the initial determination, the order may be appealed by filing a petition meeting the requirements of §210.43(b). The periods for filing such petitions and responding to the petitions will be specified in the Commission notice issued pursuant to §210.42(i), if the initial determination has granted a motion for termination of the investigation, or in the Commission notice issued pursuant to §210.46(a), if the initial determination concerns violation of section 337. The Commission will determine whether to adopt the order after disposition of the initial determination concerning violation of section 337 or termination of the investigation.

(e) If the administrative law judge's ruling on the motion for sanctions is in the form of a recommended determination pursuant to paragraph (c) of this section, the deadlines and procedures for parties to contest the recommended determination will be set forth in the Commission order assigning the motion to an administrative law judge.

(f) If a motion for sanctions is filed with the administrative law judge during an investigation, he may defer his adjudication of the motion until after he has issued a final initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of investigation. If the administrative law judge defers his adjudication in such a manner, his ruling on the motion for sanctions must be in the form of a recommended determination and shall be issued no later than 30 days after issuance of the Commission's final determination on violation of section 337 or termination of the investigation. To aid the Commission in determining whether to adopt a recommended determination, any party may file written comments with the Commission 14 days after service of the recommended determination. Replies to such comments may be filed within seven days after service of the comments. The Commission will determine whether to adopt the recommended determination after reviewing the parties' arguments and taking any other steps the Commission deems appropriate.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008]

§210.26 Other motions.

Motions pertaining to discovery shall be filed in accordance with §210.15 and the pertinent provisions of subpart E of this part (§§210.27 through 210.34). Motions pertaining to evidentiary hearings and prehearing conferences shall be filed in accordance with §210.15 and the pertinent provisions of subpart F of this part (§§210.35 through 210.40). Motions for temporary relief shall be filed as provided in subpart H of this part (see §§210.52 through 210.57).

Subpart E—Discovery and Compulsory Process

§210.27 General provisions governing discovery.

(a) *Discovery methods.* The parties to an investigation may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection or other purposes; and requests for admissions.

(b) *Scope of discovery.* Regarding the scope of discovery for the temporary relief phase of an investigation, see §210.61. For the permanent relief phase of an investigation, unless otherwise ordered by the administrative law judge, a party may obtain discovery regarding any matter, not privileged, that is relevant to the following:

(1) The claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things;

(2) The identity and location of persons having knowledge of any discoverable matter;

(3) The appropriate remedy for a violation of section 337 of the Tariff Act of 1930 (see § 210.42(a)(1)(ii)(A)); or

(4) The appropriate bond for the respondents, under section 337(j)(3) of the Tariff Act of 1930, during Presidential review of the remedial order (if any) issued by the Commission (see § 210.42(a)(1)(ii)(B)).

It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations of paragraph (d) of this section.

(c) *Specific limitations on electronically stored information.* A person need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. The party seeking the discovery may file a motion to compel discovery pursuant to § 210.33(a). In response to the motion to compel discovery, or in a motion for a protective order filed pursuant to § 210.34, the person from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations found in paragraph (d) of this section. The administrative law judge may specify conditions for the discovery.

(d) *General limitations on discovery.* In response to a motion made pursuant to §§ 210.33(a) or 210.34 or *sua sponte*, the administrative law judge must limit by order the frequency or extent of discovery otherwise allowed in this subpart if the administrative law judge determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity to obtain the information by discovery in the investigation;

(3) The responding person has waived the legal position that justified the discovery or has stipulated to the particular facts pertaining to a disputed issue to which the discovery is directed; or

(4) The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the investigation, the importance of the discovery in resolving the issues to be decided by the Commission, and matters of public concern.

(e) *Claiming privilege or work product protection.* (1) When, in response to a discovery request made under this subpart, a person withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as attorney work product, the person must:

(i) Expressly make the claim when responding to a relevant question or request; and

(ii) Within 10 days of making the claim produce to the requester a privilege log that describes the nature of the information not produced or disclosed, in a manner that will enable the requester to assess the claim without revealing the information at issue. The privilege log must separately identify each withheld document, communication, or item, and to the extent possible must specify the following for each entry:

(A) The date the information was created or communicated;

(B) The author(s) or speaker(s);

(C) All recipients;

(D) The employer and position for each author, speaker, or recipient, including whether that person is an attorney or patent agent;

(E) The general subject matter of the information; and

(F) The type of privilege or protection claimed.

(2) If a document produced in discovery is subject to a claim of privilege

or of protection as attorney work product, the person making the claim may notify any person that received the document of the claim and the basis for it.

(i) The notice shall identify the information in the document subject to the claim, preferably using a privilege log as defined under paragraph (e)(1) of this section. After being notified, a person that received the document must do the following:

(A) Within 7 days of service of the notice return, sequester, or destroy the specified document and any copies it has;

(B) Not use or disclose the document until the claim is resolved; and

(C) Within 7 days of service of the notice take reasonable steps to retrieve the document if the person disclosed it to others before being notified.

(ii) Within 7 days of service of the notice, the claimant and the parties shall meet and confer in good faith to resolve the claim of privilege or protection. Within 5 days after the conference, a party may file a motion to compel the production of the document and may, in the motion to compel, use a description of the document from the notice produced under this paragraph. In connection with the motion to compel, the party may submit the document *in camera* for consideration by the administrative law judge. The person that produced the document must preserve the document until the claim of privilege or protection is resolved.

(3) Parties may enter into a written agreement to waive compliance with paragraph (e)(1) of this section for documents, communications, and items created or communicated within a time period specified in the agreement. The administrative law judge may decline to entertain any motion based on information claimed to be subject to the agreement. If information claimed to be subject to the agreement is produced in discovery then the administrative law judge may determine that the produced information is not entitled to privilege or protection.

(4) For good cause, the administrative law judge may order a different period of time for compliance with any requirement of this section. Parties may enter into a written agreement to set a different period of time for compliance with any requirement of this section without approval by the administrative law judge unless the administrative law judge has ordered a different period of time for compliance, in which case the parties' agreement must be approved by the administrative law judge.

(f) *Supplementation of responses.* (1) A party who has responded to a request for discovery with a response is under a duty to supplement or correct the response to include information thereafter acquired if ordered by the administrative law judge or the Commission or in the following circumstances: A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(2) A duty to supplement responses also may be imposed by agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

(g) *Signing of discovery requests, responses, and objections.* (1) The front page of every request for discovery or response or objection thereto shall contain a caption setting forth the name of the Commission, the title of the investigation or related proceeding, and the docket number or investigation number, if any, assigned to the investigation or related proceeding.

(2) Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and shall state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, the request, objection, or response is:

(i) Consistent with § 210.5(a) (if applicable) and other relevant provisions of

this chapter, and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a request, response, or objection is certified in violation of paragraph (d)(2) of this section, the administrative law judge or the Commission, upon motion or sua sponte under §210.25 of this part, may impose an appropriate sanction upon the person who made the certification, the party on whose behalf the request, response, or objection was made, or both.

(4) An appropriate sanction may include an order to pay to the other parties the amount of reasonable expenses incurred because of the violation, including a reasonable attorney's fee, to the extent authorized by Rule 26(g) of the Federal Rules of Civil Procedure. Monetary sanctions shall not be imposed under this section against the United States, the Commission, or a Commission investigative attorney.

(5) Monetary sanctions may be imposed under this section to reimburse the Commission for expenses incurred by a Commission investigative attorney or the Commission's Office of Unfair Import Investigations. Monetary sanctions will not be imposed under this section to reimburse the Commission for attorney's fees.

[59 FR 39039, Aug. 1, 1994, as amended at 78 FR 29623, May 21, 2013]

§210.28 Depositions.

(a) *When depositions may be taken.* Following publication in the FEDERAL REGISTER of a Commission notice instituting the investigation, any party may take the testimony of any person, including a party, by deposition upon oral examination or written questions. The presiding administrative law judge will determine the permissible dates or deadlines for taking such depositions. Without stipulation of the parties, the complainants as a group may take a maximum of five fact depositions per respondent or no more than 20 fact depositions whichever is greater, the respondents as a group may take a maximum of 20 fact depositions total, and if the Commission investigative attorney is a party, he or she may take a maximum of 10 fact depositions and is permitted to participate in all depositions taken by any parties in the investigation. Each notice for a corporation to designate deponents only counts as one deposition and includes all corporate representatives so designated to respond, and related respondents are treated as one respondent for purposes of determining the number of depositions. The presiding administrative law judge may increase the number of depositions on written motion for good cause shown.

(b) *Persons before whom depositions may be taken.* Depositions may be taken before a person having power to administer oaths by the laws of the United States or of the place where the examination is held.

(c) *Notice of examination.* A party desiring to take the deposition of a person shall give notice in writing to every other party to the investigation. The administrative law judge shall determine the appropriate period for providing such notice. A party upon whom a notice of deposition is served may make objections to a notice of deposition and state the reasons therefor within ten days of service of the notice of deposition. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. A notice may provide for the taking of testimony by telephone, but the administrative law